

To: deanna
From: brewster@wais.com (Brewster Kahle)
Subject: print and save
Cc:
Bcc:
X-Attachments:

>Date: Fri, 22 Dec 1995 17:21:17 -0500
>From: KGillotti@aol.com
>To: Brewster@wais.com
>Subject: Letter

Confidential

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>
>Mr. Brewster Kahle
>WAIS, Inc.
>690 5th Street
>San Francisco, CA 94107-1517

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>
>Dear Brewster:

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>This is to confirm our agreement regarding the transfer of the WAIS, Inc.
>(iWAISi) software business to a new company you will be establishing, and
>the arrangements we have made regarding America Online Inc.is (iAOLi or the
>iCompanyi) interest in, and your employment by, that new company.

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>Severance Terms and Conditions:

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>I. New Corporation

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> A. The Company consents to your formation of a new corporation, the
>principal business of which will be (i) commercializing the existing WAIS
>software technology and (ii) providing support and maintenance services
>under all of the existing (as well as any future) maintenance and support
>service contracts (iNewcoi) and to the employment by Newco of up to four
>employees currently employed by the Company, _____, _____, _____, and
>_____, subject to and conditioned on the performance of your obligations
>under this Letter Agreement.

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> B. All of the authorized capital stock of Newco will be issued or reserved
>as follows: 34% to you, 33% expressly reserved for issuance under an employee
>stock option plan, and 19.9% to be issued to AOL upon formation of Newco and
>13.1% to be reserved for issuance to AOL pursuant to AOL's option to acquire
>up to 13.1% in the future at a nominal price.

>
> C. You will cause Newco to authorize AOL to designate one person to the
>Board of Directors of Newco, for the duration of the period that AOL
>continues to hold not less than 60% of aforesaid stock or option to acquire
>stock in Newco.

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> D. You hereby assume all current and future obligations and liabilities
>under each maintenance and support contract to which WAIS is currently a
>party, or for which WAIS is in any manner obligated, including but not
>limited to the existing contract with the White House, and the contracts with
>_____. To the extent that any such
>contract is not assignable you hereby indemnify AOL, its employees, officers,
>directors and other representatives for all such obligations and liabilities

>which AOL, using commercially reasonable efforts, is not able to divest or
>settle for less than \$1,000 within six months of the date hereof. Upon the
>date of their employment by Newco, you will assume all liabilities with
>regard to any obligations accrued after such date to the up to 4 employees to
>be hired pursuant to Section IA above.

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>II. Software

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> A. The Company agrees to transfer to you its right, title and interest in
>and to all existing proprietary WAIS software, provided that you grant to AOL
>a fully paid, world wide, perpetual, and unrestricted license to the same
>such software, including all enhancements, modifications, upgrades, and
>functional equivalents, and the unrestricted right to sublicense and
>distribute the same, and you hereby so grant the foregoing to AOL effective
>as of the same date AOL grants and delivers to you the source code and
>related documentation to consummate the above described transfer.

>
> B. The Company acknowledges and agrees that it has no rights and will claim
>no right, title or interest in software or any other product developed by
>Newco after the date of the closing of the Newco transaction contemplated by
>this letter, without limiting or forfeiting any of the Company's above
>described license to use any WAIS software. With respect to products or
>services offered by Newco in the future, AOL shall be entitled to most
>favored customer treatment on all matters including price and availability of
>services.

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>III. Non-Compete

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> A. That certain Non-Competition and Non-Solicitation Agreement entered into
>by and between AOL, WAIS (formerly known as AOL Acquisition Corp.) and you as
>of May 23, 1995 (the "Non-Compete Agreement"), a copy of which is attached
>hereto, remains in full force and effect, subject to the following
>provisions. The parties hereby agree that the Non-Compete Agreement is
>amended by (i) AOL's agreement to allow you to conduct the business of Newco
>as contemplated in this Letter Agreement and (ii) any exception to the
>Non-Compete Agreement subsequently agreed to in writing by AOL pursuant to
>the process set forth below in this Letter Agreement, and that in the event
>of a conflict between the provisions of the Non-Compete Agreement and the
>provisions of this Letter Agreement the provisions of this Letter Agreement
>shall prevail.

>
> B. You will provide AOL with written notice of not less than thirty days,
>prior to any action by you or Newco which would otherwise constitute a
>violation of the Non-Compete Agreement but for this Letter Agreement. In the
>event that AOL, in its reasonable discretion, decides to waive the violation
>of the Non-Compete Agreement, it will so notify you in writing not more than
>fifteen days after receiving such notice from you. Reasonable discretion, as
>used herein, shall include, without limitation, consideration of whether AOL
>or its affiliates would likely incur substantial economic injury or damage to
>its reputation as a result of your competitive conduct. In the event that AOL
>elects not to waive the violation, it shall so notify you within such fifteen
>day period, and its decision shall be final, and you hereby agree not to
>contest or dispute such decision in any way whatsoever.

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>IV. Stock Options

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> A. Notwithstanding any agreement you have with AOL regarding stock options,
>which is hereby amended as follows, or the terms of AOL's 1992 Employee
>Director and Consultant Stock Plan (the "1992 Plan") to the contrary, AOL
>hereby agrees that 25% of the total number of your AOL options would
>otherwise have vested over a four year period but for your termination of
>employment shall vest on May 23, 1996, pursuant to and in consideration for

>a Consultant Agreement which you agree to enter into with AOL, which shall
>provide that you will make available to AOL reasonable consulting services
>within your area of expertise until May 23, 1996-. All other AOL options
>which were granted to you hereby lapse.

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> B. With respect to the four AOL employees you are taking with you to Newco,
>AOL hereby agrees to continue the vesting of all AOL stock options granted to
>such employees under the 1992 Plan until May 23, 1996, provided that such
>employees enter into a Consultant Agreement similar to the one you will enter
>into requiring them to render consulting services to AOL until such vesting
>date. AOL stock options which would not otherwise vest by May 23, 1996 will
>lapse upon each such employees' termination of employment with AOL.

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>In consideration for the terms described above, you agree:

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>(i) Not to do or say anything to criticize or damage the reputation of the
>Company, or to harm the Company's management or normal, ongoing business
>operations unless required to give testimony during legal proceedings.

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>(ii) To release and forever discharge the Company, and any affiliated or
>successor corporation or other entity, and all of their officers, directors
>and employees (collectively, the "Affiliated Companies") from any and all
>losses, expenses, claims, rights and entitlements, whether known or unknown,
>that you have now or may later claim to have had against the Affiliated
>Companies, including, without limitation, those arising out of your
>employment or termination of employment with the Company, excluding only your
>rights to any vested pension benefits. This includes, but is not limited to,
>any claims for back pay, for reinstatement or for recovery of any losses or
>other damages to you or your property based on any alleged violation of Title
>VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq
>(prohibiting discrimination on account of race, sex, color, national origin
>or religion); the Age Discrimination in Employment Act of 1967, 29 U.S.C.
>Section 621 et seq (prohibiting discrimination on account of age); the
>Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq
>(prohibiting discrimination on account of disabilities); or any similar
>local, state, or federal laws.

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>(iii) Not to pursue any individual claim against the Affiliated Companies
>(except for a breach of this Letter Agreement). You agree not to file a
>lawsuit in any local, state or federal court or an individual monetary claim
>with any local, state or federal agency against the Affiliated Companies as a
>result of your employment or the termination of your employment with the
>Company.

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>We contemplate entering into a Consulting Agreement, which will reflect the
>matters described above and contain the typical provisions regarding the
>termination of your employment with AOL, and the necessary documents
>regarding Newco in the next several weeks. If you have any questions about
>this Letter Agreement please call me.

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By: _____
Lennert J. Leader
Senior Vice President

WAIS, Inc.:

By: _____
Michael M. Connors

>Agreed:

>Brewster Kahle

Date

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